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11 Attorneys for Plaintiff JENS ERIK SORESENSEN,
12 as Trustee of SORESENSEN RESEARCH AND
13 DEVELOPMENT TRUST

14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

15 JENS ERIK SORESENSEN, as Trustee of	) Case No. 08 CV 00095 JW
16 SORESENSEN RESEARCH AND)
17 DEVELOPMENT TRUST,	) DECLARATION OF J. MICHAEL
	) KALER IN SUPPORT OF
18 Plaintiff	) PLAINTIFF'S MOTION FOR
19 v.	) APPLICATION OF 35 U.S.C. § 295
	) PRESUMPTION OF
20 LEXAR MEDIA, INC., a Delaware	) INFRINGEMENT
21 Corporation; and DOES 1 – 100,)
	) Date: June 30, 2008
22 Defendants.	) Time: 9:00 A.M.
	) Courtroom 8, 4 th Floor
	) Judge: The Hon. James Ware
24)
25	) <i>Oral Argument is Respectfully Requested</i>
26	) <i>at Hearing on This Matter.</i>
27)
28)

1 I, J. MICHAEL KALER, declare:

2
3 1. I am not a party to the present action. I am over the age of eighteen. I
4 have personal knowledge of the facts contained within the following paragraphs, and
5 could and would competently testify thereto if called as a witness in a court of law.
6

7 2. At all times relevant herein I have been an attorney for Sorensen
8 Research and Development Trust ("SRDT"), Plaintiff in the above-captioned matter.
9

10 3. This declaration is made in support of Plaintiff's Motion for Application
11 of 35 U.S.C. § 295 Presumption of Infringement.
12

13 4. Attached hereto as Exhibit F is a true and correct copy of the letter dated
14 December 6, 2007 from Mr. Kuyper to Ms. Kramer. As can be readily seen from the
15 face of Exhibit F, Lexar's counsel proposed that ONLY Melody Kramer and I could
16 view the documents in question. The agreement demanded by Lexar's counsel
17 forbids showing the documents to expert witnesses or the patentee where it states:

18 You have requested copies of correspondence with Lexar's two
19 suppliers showing written assurances that Lexar received. We are
20 conditionally willing to share with you copies of correspondence with
21 suppliers that evidence their written assurances to Lexar of their use of a
22 non-infringing process. We will do so if you, Mr. Kaler, and SRD Trust
23 agree: (1) to keep them confidential and accessed only by you [Ms.
24 Kramer] and Mr. Kaler; (2) to never use them for any purpose other
25 than evaluating SRD Trust's infringement allegations against Lexar
26 concerning the '184 patent; (3) that Lexar has not waived any privileges
27 by sharing them; and (4) that SRD Trust will never claim any waiver as
28 a result of our sharing them.

I declare under penalty of perjury under the laws of the United States of

1 America that the foregoing paragraphs are true and correct to the best of my own
2 personal knowledge.

3 DATED this Monday, June 16, 2008.
4

5 /s/ J. Michael Kaler
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J. Michael Kaler, Esq.
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Exhibit F